

REBUTTAL TESTIMONY
of
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Energy Division
Illinois Commerce Commission

ILLINOIS POWER COMPANY
Approval of Delivery Services Tariffs
And Delivery Services Implementation Plans

Docket No. 01-0432

November 6, 2001

1 **Q. Are you the same David A. Borden who prepared direct testimony in this**
2 **proceeding?**

3 A. Yes, I am.

4 **Q. What is the purpose of your rebuttal testimony?**

5 A. The purpose of my rebuttal testimony is to respond to the rebuttal testimony of
6 Illinois Power's witness, Ms. Jacqueline K. Voiles, concerning the Company's
7 tariff language that requires retail customers to pay for their supplier's unpaid
8 transmission charges.

9 **Q. Please respond to Ms. Voiles' claim that the language in SC 110 requiring a**
10 **retail customer to pay for transmission costs incurred but not paid by the**
11 **customer's RES should be considered a last resort? (IP Exhibit 5.11, p. 5)**

12 A. I agree with Ms. Voiles' characterization. However, enacting this measure as a
13 last resort against uninformed retail customers is still inappropriate and the
14 language should be deleted from the Company's tariffs.

15 **Q. Do you agree with Ms. Voiles' assertion that a retail delivery services**
16 **customer is a Transmission Customer under the OATT? (IP Exhibit 5.11, p.**
17 **5, I. 98-101)**

18 A. A retail delivery services customer is an Eligible Customer under the OATT. It is
19 possible that a retail delivery services customer could also be a Transmission
20 Customer under the OATT. However, only a select few retail customers will
21 enlist for transmission service directly from the OATT. Almost all retail customers
22 will receive transmission service through the actions, knowledge and expertise of
23 their RES or some other entity. The RES is also permitted to be a Transmission

Customer by OATT definition and can procure this service. If the RES procures this service for an Eligible Customer, then the RES, not the retail delivery services customer, is the Transmission Customer. The OATT does not require retail customers to pay for the unpaid transmission bill of the RES, rather the Company's tariff, SC 110, imposes this unreasonable condition.

Q. How many customers are currently taking transmission service from IP as Transmission Service Agents (TSA) to serve retail load?

A. According to the Company's responses to Staff data request, DB 2, there are three such transmission customers: two of the three are utility companies, i.e., IP and CILCO, and the third is a large industrial customer. The retail customers served by IP in this manner are Power Purchase Option (PPO) customers.

Q. Please respond to Ms. Voiles' claim that, "...Thus, as Mr. Borden acknowledges, the TSA is an agent for the retail delivery services customer." (IP Exhibit 5.11, p. 6, l. 115-116)

A. In my direct testimony I indicate that, "...a RES (transmission customer) is allegedly acting as an agent for a retail customer (eligible customer) by OATT definition..." (ICC Staff Ex. 8.0, p. 4, l. 60-63, emphasis added) I make this statement in my direct testimony to demonstrate that transmission service is applied for, paid for, and administered by the RES, not the retail customer. I use the term "allegedly" because I do not believe that an agency relationship is established that may allow the utility to collect the unpaid portion of the RES' transmission bill from the retail customer.

Q. In your opinion does either SC 110 or the OATT establish an agency relationship that would allow the Company to require retail customers to pay for the unpaid transmission bills of its RES?

A. No, neither SC 110, nor the OATT establish that kind of agent relationship.

Although the OATT uses the term Designated Agent to refer to the RES acting on behalf of the eligible customer, I found no further description in the OATT of the terms of the relationship between the two. Although the OATT allows for Transmission Customers to act on behalf of retail customers (Eligible Customers), it does not require retail customers to pay for the unpaid portion of the RES' transmission bill.

Similarly, SC 110 requires that the customer designate a Transmission Service Agent ("TSA"). The TSA is defined as an entity designated by a Customer or Customer's RES to be responsible for arranging Transmission Service for the Customer. I am not an attorney, but I do not believe that IP can create an agency relationship between the customer and the TSA simply by using the term agent in its tariff.

Furthermore, if the OATT establishes the agency relationship alleged by the Company, then the language set forth in SC 110 is not needed and should be deleted.

Q. If the letter of agency establishes an agency relationship between the retail customer and the RES would that relationship allow the Company to require retail customers to pay for the unpaid transmission bills of its RES?

A. No. It is my understanding that the purpose of the letter of agency ("LOA"), required under the Consumer Fraud and Deceptive Business Practices Act, is simply to authorize an electric service provider change. The Consumer Fraud And Deceptive Business Practices Act, requires, among other things, that an electric provider shall not submit or execute a change in a subscriber's selection of a provider of electric service unless the LOA includes, among other requirements:

(iii) The terms, conditions, and nature of the service to be provided to the subscriber must be clearly and conspicuously disclosed, in writing, and an electric service provider must directly establish the rates for the service contracted for by the subscriber; and... 815 ILCS 505/2EE(5)(iii)

The terms of the relationship between the electric service provider and the retail customer are required to be clearly disclosed in the LOA.

Unless the LOA between the RES and retail customer sets forth the terms and conditions of transmission service and the applicable charges for which retail customers will be ultimately responsible, then the Utility cannot make such demands of the retail customer on the grounds that an agency relationship allows such action. In other words, asserting that a RES is acting as an agent in the utility tariff is not sufficient grounds for legally requiring retail customers to be responsible for the unpaid bills of the so called agent.

Q. What does IP require in the LOA in order for a customer to enroll for delivery services?

A. According to IP's tariff, SC 110, the LOA must indicate that the customer has selected the RES and include the following information:

- (a) Signature of Customer or Customer's authorized representative;
- (b) Date of the Letter of Agency;
- (c) Name under which Customer's account is held with Utility;
- (d) Service address of Customer;
- (e) Mailing address of Customer;
- (f) Daytime and evening telephone numbers of customer;
- (g) Account number(s) of Customer;
- (h) Meter number(s) of Customer;
- (i) Name of RES; and
- (j) As applicable, a statement reflecting Customer's decision to switch to a RES from Utility, from one RES to another, or to switch service classifications.

A written contract between Customer and its RES would satisfy this requirement if it were to include this information. (SC 110, 5. Application for and Commencement of Services, B. Enrollment for Delivery Services, (1) pp. 4-5)

Q. Do the LOA requirements mention or refer to transmission charges in any detail?

A. No. Since the utility's LOA requirements do not mention or refer to transmission charges and the utility does not know what is set forth in the LOA between the customer and its RES, it is inappropriate for the utility to claim, by assertion in the

tariff, that an agency relationship allows the utility to bill the retail customer for the unpaid transmission charges of the customer's RES. If the RES and the retail customer have agreed that the retail customer will be ultimately reliable for the RES' unpaid transmission service, and proof of this agreement is demonstrated to the utility, then it is most likely permissible for the utility (or other transmission provider) to bill the retail customer for such services.

Q. Is it correct to say that you support retail customers being billed, by the utility, for the unpaid transmission services of their RES, so long as the retail customer has been informed of the terms and conditions of the transmission service and agrees to accept this liability in its contract or LOA with the RES?

A. Yes. My position promotes treatment for retail customers that is similar to that currently available to the incumbent electric utility. For example, if IP were to enter in to a contract to purchase electric power and energy from American Electric Power (AEP) or Enron, and the power were transported across the Cinergy transmission grid to be delivered to IP, IP is not required to pay Cinergy for the unpaid transmission bills of AEP or Enron. IP could choose to accept this liability through negotiation with AEP or Enron and retail customers of IP should have the same option. IP can elect to provide retail customers the same option that it enjoys by agreeing with my recommendation to delete the contested language from its tariffs.

137 **Q. Is transmission service somehow different from bundled utility service**
138 **such that the terms and conditions should be explained in more detail to**
139 **retail customers before imposing this liability on retail customers?**

140 A. The short answer is, yes. Bundled retail tariffs require that customers pay for
141 transmission service and the cost is rolled in to the bundled rate. Generally
142 speaking, with respect to transmission service, the customer does nothing but
143 pay the bill. (I recognize that there are bundled retail tariffs that meet specific
144 customer needs, e.g., Interruptible Service, or service defined according to a
145 specific business process. Service under these tariffs may require greater
146 customer knowledge of electric transmission service.) When a customer
147 switches to delivery services, the transmission component is unbundled and the
148 retail customer or its RES, or some other entity, must procure transmission
149 service, not simply pay for the service. In general, transmission service includes,
150 but is not limited to, applying for the service, designating the type of transmission
151 service, e.g., firm, non-firm, network integrated service, and procuring several
152 ancillary services, e.g., Scheduling, Reactive Supply and Voltage Control,
153 Regulation and Frequency Response, Energy Imbalance Service, Operating
154 Reserve – Spinning Reserve, Operating Reserve – Supplemental Reserve. In
155 order to procure these services, a customer must be knowledgeable of the
156 utility's OATTs and their Open Access SameTime Information System (OASIS).
157 It is unreasonable, to say the least, to claim that retail customers, in general,
158 have any knowledge or expertise in directly procuring these services. Whether
159 transmission service is procured and utilized properly will depend on the

expertise and knowledge of the retail customer's RES (or other entity), and the RES should be billed accordingly.

Q. Do you agree with Ms. Voiles' proposal to add language to SC 110 requiring additional language to the LOA requirements regarding Transmission Services. (IP Exhibit 5.11, p.7, l. 135-142)

A. I do not object to adding this language (it is an improvement over the current language) if the Commission does not adopt my recommendation to delete the requirement that retail customers be responsible for the unpaid transmission bills of their RES, although I am unsure as to whether the proposed language provides sufficient notice to the customer.

Q. Do you agree with Ms. Voiles' contention that a TSA is not limited to a RES by OATT definition? (IP Exhibit 5.11, p. 7, l. 144-149)

A. Yes, I agree with her statement. I expect that most TSAs are RESs but the transition to a competitive market has been slow in general and slower in IP's service area, so it would be inappropriate to rush to conclude who will perform the TSA function, but the TSA function is not limited to a RES.

Q. Will IP always function as the transmission provider for bundled and unbundled retail customers?

A. Probably not. It is my understanding that IP is under some legal obligation to join a Regional Transmission Organization (RTO.) Currently, IP is a member of the Alliance RTO (ARTO.) Assuming transmission service is provided by the ARTO, with IP as a member, one could argue that it makes even less sense for IP to continue requiring retail customers to pay for the unpaid transmission bills of their

RES, as IP would no longer be the Transmission Provider for most, if not all transmission services.

Q. Do the ARTO's proposed OATTs provide additional measures for the ARTO to recover unpaid transmission charges from transmission customers?

A. Yes. The ARTO's proposed OATT includes a section that requires Transmission Customers to pay for bad debt expense to recover Transmission Customer defaults on OATT charges. (See ARTO OATT, Vol. I Original Sheet No. 283, Schedule 10, Administrative Fee, Section (4)) It is my understanding that the ARTO will bill Transmission Customers on a monthly basis according to previously incurred bad debt expense. Given that the ARTO can require credit security from Transmission Customers and bill all Transmission Customers for bad debt expense, I fail to see why retail customers must be saddled with this liability as well.

Q. Please respond to Ms. Voiles' claims that retail customers' lack of knowledge or expertise with respect to transmission services is not a meaningful argument in support of your recommendation? (IP Exhibit 5.11, pp. 7-8, l. 150-162)

A. First, as I stated earlier in my rebuttal testimony, IP's assertion that an agency relationship exists between the retail customer and their RES for transmission service is insufficient to establish an agency relationship for the purposes of billing the retail customer for the unpaid portion of the RES' transmission bill. It would not be sound policy to rely upon that assertion to impose this financial liability on uninformed retail customers.

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207 Second, comparing bundled retail service to transmission service for all retail
208 customers is inappropriate. Bundled service provided by IP requires less
209 understanding on behalf of the retail customer because there are fewer functions
210 for the customer to perform and they do not require as much specific knowledge
211 of electric transmission systems and customer usage. For most customers the
212 transmission service is rolled into the customer's bill. Once transmission service
213 is unbundled and a customer selects delivery services, transmission service must
214 be procured.

215 **Q. Does IP explain how to procure transmission services?**

216 A. Yes. IP explains the business practices for procuring transmission services on
217 the OASIS at the following internet address: [http://oasis.maininc.org/documents/](http://oasis.maininc.org/documents/ip/businesspractices.htm)
218 [ip/businesspractices.htm](http://oasis.maininc.org/documents/ip/businesspractices.htm). I downloaded and printed this document in Word and it
219 is 24 pages in length. Claims that most retail customers will understand this
220 material or take the time to understand this material are not credible, in my
221 opinion. Furthermore, the business practices set forth on the OASIS are not the
222 OATT. All of the transmission charges and detailed procedures, practices,
223 etc...are set forth in the OATT, which is 204 pages in length.

224 **Q. Are retail customers allowed and expected to take service directly from the**
225 **OATTs?**

226 A. They are allowed to, but not expected to take service under the OATTs.
227 Assume, for the sake of argument, that a retail customer decides to manage all
228 of its power and energy purchases, delivery services functions, and transmission

services itself. In order to perform all of these functions a retail customer must devote a great deal of time and effort to understand industry specific information and successfully arrange for their transmission services. Some customers may only be able to accomplish this task if they devote staff to the job. In fact, the Company's tariffs regulating the Customer Self Manager require such dedication from the retail customer who chooses this route.

Q. Please discuss some of the terms and conditions set forth in the Company's tariffs for Customer Self Managers. (See SC 150, B. Designation of Customer as Self-Manager, pp. 4-5)

A. The Customer Self Manager (CSM) must have a maximum demand of at least 4 MW, which eliminates all residential customers.

The CSM must comply with all rules, procedures, practices, tariffs, etc. ... regarding the use, operation, maintenance, safety, integrity, and reliability of the interconnected transmission system. The latter implies detailed electrical knowledge as well as institutional knowledge regarding the electric transmission system. It is unreasonable for IP to expect more than a select few customers to have this knowledge and expertise.

The CSM must demonstrate that it possesses sufficient technical capabilities. The CSM can satisfy this requirement by maintaining a technical staff on duty or on call 24 hours a day each day to conduct the CSM's operations as to the purchase, scheduling and delivery of electric power and energy.

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253 I can go on, because there are more requirements of the CSM, but the point I am
254 making here is that IP's treatment of a CSM, i.e., the most savvy retail customers
255 in their service area, demonstrates that taking unbundled retail transmission
256 service under the OATTs is an entirely different animal than bundled service.
257 Unbundled retail transmission service is much more complex and requires much
258 more specific knowledge of the workings of the transmission system than
259 bundled service, which is why most retail customers will leave this service to their
260 RES (or some other entity) to provide.

261 **Q. Please respond to Ms. Voile's comments regarding the financial**
262 **qualification requirements of the ARES certification rule (Part 451). (IP**
263 **Exhibit 5.11, p. 9, ll. 176-181)**

264 A. In my direct testimony, I assert that my alternative proposal to resolve the issue
265 of retail customer liability for a RES' unpaid transmission service, is to require
266 language in the LOA explicitly stating this liability. I add that this approach is
267 flawed, in part because it may encourage non-credit worthy RES to enter the
268 market. Ms. Voiles indicates that she does not understand my point because the
269 Part 451 rules are in place to prevent non-credit worthy RESs from serving in the
270 market. She suggests that Staff should seek to increase the requirements of
271 Part 451 if Staff is concerned about non-credit worthy RES serving the market.

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273 I am not claiming that the requirements in Part 451 are inadequate. To avoid
274 confusion, I should have prefaced my remarks in my direct testimony by

275 assuming there were no Part 451 financial requirements of a RES. To the extent
276 that Part 451 financial requirements are somehow inadequate or that a RES is
277 not in compliance with Part 451 on an ongoing basis, requiring retail customers to
278 pay for the unpaid portion of a RES' transmission bill may encourage non-
279 creditworthy RES to enter the market because the cost of that behavior can be
280 shifted to retail customers. However, Ms. Voile's response in her rebuttal
281 expresses some sentiment that is consistent with my position, i.e., if we are
282 concerned about a potentially bad actor RES or a RES who goes out of business
283 and puts money owed for transmission service at risk of being un-recovered,
284 then the proper approach is to address the issue through the credit security
285 requirements or possibly through the collection of bad debt expense from
286 transmission customers.

287 **Q. Does this conclude your rebuttal testimony?**

288 **A.** Yes.